

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IN RE EX PARTE APPLICATION OF )  
NICHOLAS CARTER AS RECEIVER )  
FOR SUTTON, LTD AND WEMBLEY, LTD )  
Pursuant to 28 U.S.C. § 1782, )  
For an Order to Obtain Discovery )  
In Aid of a Foreign Proceeding )  
\_\_\_\_\_ )

Case No: \_\_\_\_\_

**APPLICATION FOR AN ORDER PURSUANT TO 28 U.S.C. § 1782  
TO OBTAIN DISCOVERY FOR USE IN FOREIGN PROCEEDINGS**

Nicholas Carter as Receiver for Sutton, Ltd and Wembley, Ltd (“Applicant”), by and through his undersigned counsel, respectfully applies to this Court for an order pursuant to 28 U.S.C. § 1782 authorizing Applicant to issue a subpoena duces tecum to Citi Private Bank, of Citibank, N.A. (“Citi”), which resides and conducts business within the Southern District of New York, at its business address at Citibank, N.A., 153 East 53rd Street, New York, NY 10002, to produce documents for use in a Territory of the Virgin Islands (the “British Virgin Islands,” alternatively, “BVI”) proceeding. The proposed form of subpoena duces tecum is attached to the Declaration of Dean R. Nicyper, dated August 19, 2019 (the “Nicyper Declaration”).

This Application meets all of the statutory and discretionary factors considered under 28 USC § 1782. Applicant seeks discovery for the purpose of using it in aid of Applicant’s duties as the court-appointed Receiver of two BVI companies, Sutton, Ltd (“Sutton”) and Wembley, Ltd (“Wembley”) (together, the “Companies”). The Eastern Caribbean Supreme Court, Court of Appeal for the BVI (the “BVI Court of Appeal”) issued an order dated October 10, 2018 (the “BVI Order”) in connection with a proceeding (case no. BVIHCVAP2016/0009 & 0010 – the “BVI Proceeding”) to determine whether to redeem the Companies’ bearer shares (the “Bearer Shares”) and, if so, in what manner. In the BVI Order, the BVI Court of Appeal directed the

appointment of a receiver of the Companies to determine whether the Bearer Shares should be redeemed. Applicant was duly appointed the Receiver of the Companies to perform such tasks.

To comply with the BVI Order and make the determination of whether or not the Bearer Shares should be redeemed, Applicant must first undertake to ascertain the value of the assets of each of the Companies. Applicant's investigation has revealed that Citi holds investments in funds and stocks as custodian for and on behalf of both of the Companies. Applicant has made multiple request to Citi for information regarding those investments and stocks, but Citi has not, at this time, provided the requested information.

As a result, Applicant is submitting the instant application to serve a subpoena duces tecum on Citi to obtain the information required for Applicant to effectuate his duties as the court-appointed Receiver for the Companies in the BVI Proceeding and to justify to any challengers in that BVI Proceeding the decision he is required to make. Applicant is not using this proceeding as an attempt to circumvent the requirements of the BVI Court, the BVI courts are receptive to this form of discovery, and the discovery sought is not unduly burdensome or intrusive.

In further support of this Application, and in addition to the Nicyper Declaration, and the exhibit annexed thereto, Applicant submits the accompanying memorandum of law, the declaration of Nicholas Carter, executed on August 19, 2019, and the exhibits annexed thereto, and the declaration of Sara-Jane Knock, executed on August 19, 2019, and the exhibits annexed thereto.

WHEREFORE, the Applicant respectfully requests that this Court enter an Order:

1. Granting Applicant's application to issue a subpoena duces tecum, substantially in the form submitted with this Application, for discovery from Citi Private Bank, of Citibank, N.A. pursuant to 28 U.S.C. § 1782;
2. Appointing the undersigned to issue and sign the subpoena, substantially in the form submitted with this Application, and serve the subpoena in accordance with the Federal Rules of Civil Procedure.

Dated: New York, New York  
August 19, 2019

WITHERS BERGMAN LLP

By: 

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